MATTER OF A-O-B-

DATE: JAN. 15, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a biological scientist, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) § 203(b)(2), 8 U.S.C. § 1153(b)(2). The Director, Texas Service Center, denied the petition. The Petitioner filed a motion to reopen which the Director dismissed. The matter is now before us on appeal. The appeal will be dismissed.

The Petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The Director found that the Petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the Petitioner has not established that a waiver of a job offer would be in the national interest. On appeal, the Petitioner submits a brief and additional evidence.

I. LAW

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
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> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

II. ISSUES

The Petitioner received a Ph.D. in Fisheries from the [redacted] Nigeria. The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." *Matter of New York State Dep't of Transp.* (*NYSDOT*), 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that he seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must demonstrate that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must show that he will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

The Petitioner has established that his work as a biological scientist is in an area of substantial intrinsic merit and that the proposed benefits of his aquaculture research would be national in scope. It remains, then, to determine whether the Petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Although the national interest waiver hinges on prospective national benefit, the petitioner must show that his past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that he will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the petitioner, rather than to facilitate the entry of an individual with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

Furthermore, eligibility for the waiver must rest with the petitioner's own qualifications rather than with the position sought. Assertions regarding the overall importance of a petitioner's area of expertise cannot suffice to establish eligibility for a national interest waiver. *Id.* at 220. At issue is whether the petitioner's contributions in the field are of such significance that he merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification he seeks.

A petitioner must exhibit a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

III. FACTS AND ANALYSIS

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on January 5, 2012. In an accompanying statement, the Petitioner asserted that he specializes in artificial fish propagation technology and that his work is in the national interest of the United States. The Petitioner further stated that his knowledge and experience "would be of extreme value in the development of breeding protocols and manuals for previously uncultured small sized fish species which are suitable candidates that could be used as laboratory models in biomedical, genetic and cancer research." The Director determined that the Petitioner's impact and influence on his field did not satisfy the third prong of the *NYSDOT* national interest analysis.

We note that the Petitioner's reference letters, résumé, and Form ETA-750B, Statement of Qualifications of Alien, do not list his employment with any research institutions after 2006. The Petitioner, however, submitted an August 2014 letter from Assistant Professor of Animal Molecular and Quantitative Genetics and Program Leader of the Animal Agriculture Program, stating that he and the Petitioner "are currently developing a research proposal for a collaborative research project to be funded by the and that "[t]hrough this project," the Petitioner "is expected to join the staff at . . . as Research Scientist to further his work aimed at advancing fish animal production in the United States."

In addition to documentation of his published and presented work, peer review activities, professional memberships, and a July 2003 letter from the "to undertake postdoctoral research training in Israel . . . at " the Petitioner submitted five letters of support discussing his work in the field. For example, who previously served with the Petitioner on the faculty at the stated:

> [The Petitioner's] . . . Ph.D. dissertation entitled further opened up our understanding of the ontogeny of several catfish species and how they could be manipulated for increased fish production through hybridization and environmental manipulation. This seminal work was a significant contribution to aquaculture and has been heavily cited in literature.

then listed several articles that purportedly support this statement. However, the list of citations in letter appears to pertain to four other research works that the Petitioner authored. The Petitioner provided no documentary evidence to support the assertion that his dissertation "has been heavily cited in literature." Statements made without supporting documentary evidence are of limited probative value and are not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The Petitioner submitted copies of articles that cited to four of his works as identified below:

1. [redacted] cited to seven times since 2002;
2. [redacted] was cited to once since 2005;
3. [redacted] was cited to once since 1998; and
4. [redacted] was cited to once since 1995.

The record indicates that the Petitioner has authored additional research articles and presentations, but he did not provide any citation evidence for those works. With regard to the Petitioner's published and presented work, there is no presumption that every article demonstrates influence on the field as a whole; rather, the Petitioner must document the actual impact of his article or presentation. A substantial number of favorable independent citations for an article is an indicator that other researchers are familiar with the work and have been influenced by it. A small number of citations, on the other hand, is generally not probative of an article's impact in the field. The Petitioner has not established that the number of independent cites per article for his research work is indicative of influence on the field as a whole.

In addition, [redacted] asserted:

> [The Petitioner] achieved groundbreaking success by artificially inducing [redacted] to spawn for the first time ever in history in the laboratory under artificially simulated environmental conditions. . . . The result of that work will soon appear in scientific journals. The findings in this research work when published will further close the gap in our knowledge of fish reproduction technology and simultaneously open up a new research area that not only represent original scientific advance but has the potential to impact a $70 billion United States seafood industry.

[redacted] indicated that the Petitioner's work concerning the artificial spawning of [redacted] "will soon appear in scientific journals," but his expectation regarding its publication and that it will "open up a new research area" does not constitute evidence that the Petitioner's work was already influential at the time of filing the Form I-140. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly, we cannot consider the Petitioner's findings that were not yet published as of the filing date and, thus, had not been disseminated in the field, to establish his eligibility at the time of filing.

[redacted] Professor of Fisheries and Aquaculture, [redacted] who co-supervised the Petitioner's doctoral dissertation and collaborated with him as a senior colleague in the Department of Fisheries and Aquaculture Technology, stated:

> [The Petitioner's] area of specialization is fish breeding, ornamental fisheries and hatchery technology which is a field that requires a high level of proficiency, precision and expertise. . . . He conducted studies on aspects of the ontogenetic development and nutrition of fish larvae as well as on the effects of some changing environmental conditions on the performance and physiology of some catfishes and their hybrids. He also worked on plant pigment sources in the diets of some ornamental fishes in Nigeria.

described the Petitioner's research projects at but did not offer any specific examples of how the Petitioner's work has influenced the field as a whole. Although the Petitioner's graduate research has value, any research must be original and likely to present some benefit if it is to receive funding and attention from the scientific or academic community. In order for a university, publisher or grantor to accept any research for graduation, publication or funding, the research must offer new and useful information to the pool of knowledge. Not every scientist who performs original research that adds to the general pool of knowledge in the field inherently serves the national interest to an extent that is sufficient to waive the job offer requirement.

Professor of Aquaculture and Fish Breeding at stated that the results of the Petitioner's "research work have been of immeasurable value to understanding of catfish species and their reproduction and ontogeny in nature and the way environmental factors can be used to manipulate several aspects of the life of fish species." He did not, however, explain how others in the field are utilizing the Petitioner's findings in their work. In addition, asserted that the Petitioner's work "is a major contribution to the field of Aquaculture as a whole." USCIS need not rely on unsubstantiated statements. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). There is no evidence showing that once disseminated through publication, the Petitioner's research concerning the reproduction and ontogeny of catfish has affected practices at a substantial number of fisheries, has garnered a significant number of citations, or has otherwise affected the field as a whole.

Furthermore, indicated that the Petitioner "has received substantial advanced training specifically in the field of fish breeding and artificial propagation technology of fish species." Any assertion that a petitioner possesses useful skills, or a "unique background" relates to whether similarly-trained workers are available in the United States and is an issue under the jurisdiction of the U.S. Department of Labor through the labor certification process. *See NYSDOT*, 22 I&N Dec. at 221.

also mentioned that the Petitioner has "served as reviewer of several international journals by reviewing the works of other researchers in the field towards publication." The Petitioner provided a December 2006 e-mail from the editorial staff of thanking him for reviewing manuscripts for the journal. With regard to the Petitioner's service as a peer reviewer for it is common for a publication to ask multiple reviewers to review a manuscript and to offer comments. The publication's editorial staff may accept or reject any reviewer's comments in

determining whether to publish or reject submitted papers. Thus, peer review is routine in the field, and there is no evidence demonstrating that the Petitioner's occasional participation in the widespread peer review process is an indication that he will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

Associate Professor of Animal Health, stated that the Petitioner spawned "a new anadromous species of fish for the first time ever in the laboratory using synthetic hormone analogues," but did not provide any examples of how others in the field are applying his work. In addition, mentioned that the Petitioner "has many of his notable research works still waiting for publication." Again, research work that was not published and had not been disseminated at the time of filing does not constitute evidence that the Petitioner's findings were already influential as of that date. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. also asserted that in the "field of animal health, the results of [the Petitioner's] previous work on transitioning aquatic animals under changing environmental conditions have been very useful and helpful," but did not offer any specific examples of its utilization or impact. The Petitioner has not presented evidence demonstrating that his work has had a wider effect on the fisheries industry or aquaculture field.

Staff Associate, stated that the Petitioner developed "methods for raising summer and southern flounder embryos through the juvenile and adult stages in a novel synthetic seawater system." In addition, noted that the Petitioner used "histological and immunofluorescent procedures to characterize the development of osmoregulatory chloride cells in the skin and gills during early larval development and metamorphosis of the southern flounder, as well as characterizing the development of hogchoker gills following adaptation to various salinities." Lastly, indicated that the Petitioner "established a functional protocol based upon hormone administration and environmental manipulation for inducing maturation of the hogchoker ovary and testes and subsequently spawn[ed] this species for the first time in the lab." While discussed the Petitioner's research work for there is no evidence indicating that the Petitioner's methods, procedures, and protocols have affected the field as a whole as to warrant a waiver of the job offer.

The Petitioner submitted letters of varying probative value. We have addressed the specific assertions above. Generalized conclusory assertions that do not identify specific contributions or their impact in the field have little probative value. *See 1756, Inc.*, 745 F. Supp. at 17. In addition, uncorroborated assertions are insufficient. *See Visinscaia v. Beers*, 4 F.Supp.3d 126, 134-35 (D.D.C. 2013) (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field); *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable"). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner's eligibility. *Id. See also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA

2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). As the submitted reference letters did not establish that the Petitioner's work has influenced the field as a whole, they do not demonstrate his eligibility for the national interest waiver.

On appeal, the Petitioner provides copies of the National Aquaculture Act of 1980, Public Law 96-362, 94 Stat. 1198, 16 U.S.C. § 2801 and the "National Strategic Plan for Federal Aquaculture Research (2014-2019)." Although the submitted documents demonstrate that the Petitioner's field of research is in the national interest, general statements regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot by themselves establish that an individual benefits the national interest by virtue of engaging in the field. *NYSDOT*, 22 I&N Dec. at 217. Such information addresses only the "substantial intrinsic merit" prong of *NYSDOT*'s national interest test. We do not dispute the importance of having qualified aquaculture researchers working in our nation's research facilities and fisheries. At issue in this matter, however, is whether the Petitioner's individual contributions in the field are of such significance that he merits the special benefit of a national interest waiver.

In addition, the Petitioner submits a 2011 article entitled which notes that there is a "global shortage of trained professionals in the rapidly growing aquaculture industry." The U.S. Department of Labor addresses assertions of worker shortages through the labor certification process, and therefore an asserted shortage alone is not sufficient to demonstrate eligibility for the national interest waiver. *Id.* at 218.

III. CONCLUSION

Considering the letters and other evidence in the aggregate, the record does not establish that the Petitioner's work has influenced the field as a whole or that he will otherwise serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. The Petitioner has not shown that his past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification he seeks.

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. Although a petitioner need not demonstrate notoriety on the scale of national acclaim, he must have "a past history of demonstrable achievement with some degree of influence on the field as a whole." *Id.* at 219, n.6. On the basis of the evidence submitted, the Petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of A-O-B-*, ID# 14958 (AAO Jan. 15, 2016)